IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

1. Ramotar Vs. State of Rajasthan
(S.B. CRIMINAL APPEAL NO.379/2002)

2. Ramotar Vs. State of Rajasthan
(S.B. CRIMINAL JAIL APPEAL NO.606/2002)

S. B. Criminal Appeals under Sec.374 (2) Cr.P.C. against the judgment dated 12-2-2002 in Sessions Case No.20/2002 passed by Sh. Yashpal Singh Chaudhary, RHJS, Additional Sessions Judge No.2 Sikar.

Date of Judgment: February 07, 2007.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA

Mr. Anoop Dhand] for the appellant.
Mr. L.S.Tomar]

Mr. M.L.Goyal, Public Prosecutor for the State.

BY THE COURT:

Challenge in these appeals is to the judgment dated February 12, 2002 of learned Additional Sessions Judge No.2, Sikar whereby the appellant Ramotar was convicted and sentenced as under:-

U/s.376 IPC:

To suffer rigorous imprisonment for seven years and fine of Rs.5000/-, in default to further suffer simple imprisonment for one month.

U/s.366 IPC:

To suffer rigorous imprisonment for five years and fine of Rs.5000/-, in default to further suffer simple imprisonment for one month.

The substantive sentences were ordered to run concurrently.

2. It is the prosecution case that informant Galku Devi submitted a written report on March 3, 2000 at Police Station Losal with the averments that her grand daughter Usha (fictitious name) aged 12 years had gone to the School on February 28, 2000 around 10 AM but did not return back. On inquiry it was found that Ramotar (appellant) took her in jeep No.RJ23G/0636. On that report a case ws registered and investigation commenced. Site was inspected, statements of witnesses under section 161 CrPC were recorded and on completion of investigation charge sheet was filed. In due course the case came up for trial before the learned Additional Sessions Judge No.2 Sikar. Charges under sections 366 and 376 IPC were framed against the appellant, who denied the charges and claimed trial. The prosecution in support of its case examined as many as 17 witnesses. In the explanation under Sec.313 CrPC, the appellants claimed innocence. No witness in defence was however examined. Learned trial Judge on hearing final submissions convicted and sentenced the appellant as indicated herein above.

3. Learned counsel for the appellant did not assail the finding of conviction, but canvassed that in the facts and circumstances of the case imposition of sentence of 10 years is too harsh. Learned Public Prosecutor however opposed the contention.

4. Having scanned the material on record, I find that appellant was 20 years of age on the date of offence. The offence was committed by him in his youthful exuberance. There are other extenuating circumstances that warrant imposition of lesser sentence. A look at the statements of prosecutrix goes to show that she herself agreed to accompany appellant and

from village Losal she travelled with the appellant in a jeep to bus-depot Sikar, thereafter both went to Jaipur in a bus and stayed in a hotel where they lived together. From Jaipur they went to Indore, stayed there for two days and came back to village Losal. During odyssey the prosecutrix kept mum and did not make hue and cry. The Age of prosecutrix according to X-ray report (Ex.P-16) was between 15 to 16 years.

5. In State of Rajasthan Vs. Ram Narain (1996)8 SCC 64, the age of the prosecutrix was between 15 to 17 years and the age of accused was 18 years. Learned Sessions Judge convicted the accused under sections 376, 366 and 342 IPC and sentenced him to undergo imprisonment for seven years, five years and one year respectively and imposed a fine of Rs.200/-. On appeal the High Court reduced the sentence to the period already undergone, namely one and a half months. The Apex Court set aside the judgment of High Court and observed as under:- (Para 7)

> "The question is: Whether the High Court is right in reducing the sentence to the period already undergone, i.e., one and a half months? We think that the High Court has committed grave error of law in reducing the sentence. Therefore the judgment of High Court is set aside. The conviction of the first accused is upheld and he is sentenced to undergo rigorous imprisonment for 5 years under section 376 IPC."

6. In Ummaid Nath Vs. State of Rajasthan (1999(2) RCC 1383) wherein the age of the prosecutrix was found below 16 years at the time of occurrence and the prosecutrix went with the accused willingly and thus the sentence of ten years rigorous imprisonment was reduced to five years rigorous imprisonment.

7. As a result of above discussion, I partly allow the appeals and while maintaining the conviction of appellant Ramotar under sections 366 and 376 IPC I reduce the sentence awarded to him under section 376 IPC from 7 years imprisonment to 5 years and three months the period that has already been undergone by him in confinement. Since the appellant has already served out the sentence awarded to him under section 366 IPC, I direct that appellant Ramotar, who is in jail, shall be set at liberty forthwith, if not required to be detained in any other case.

The impugned judgment of learned trial court stands modified as indicated above.

(Shiv Kumar Sharma)J.

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